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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1961

No. 242

THE GLIDDEN COMPANY, DURKEE FAMOUS
FOODS DIVISION, a Foreign Corporation,
Petitioner,

AGAINST

OLGA ZDANOK, JOHN ZACHARCZYK, MARY A.
HACKETT, QUITMAN WILLIAMS and MARCELLE
KREISCHER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONDENTS' SUPPLEMENTAL BRIEF

MORRIS SHAPIRO,
Counsel for Respondents,
350 Fifth Avenue,
New York 1, N. Y.

HARRY KATZ,
SAHN, SHAPIRO & EPSTEIN,
Of Counsel.

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RESPONDENTS' SUPPLEMENTAL BRIEF

Petitioner's reply brief urges that the petition for a writ of certiorari be granted because of (1) a conflict of decision among the circuits, and (2) the widespread importance of the case.

With respect to the first point, we believe that petitioner has submitted no additional matter in its reply brief which has not been heretofore fully answered in respondents' brief in opposition to the petition for certiorari. Marked factual differences between this case and the cases in the other circuits readily distinguish them. Thus

there is not a true conflict of decision upon the same subject matter which requires resolution by this Court.

With respect to the second point, petitioner now cites as evidence of the importance of the questions involved (a) the ten motions made by trade associations and chambers of commerce, of several of which petitioner is concededly a member, for leave to file *amicus* briefs in support of petitioner's position, and (b) two columns by Mr. Arthur Krock concerning this case which appeared in The New York Times, and articles which appeared on two dates in the Wall Street Journal, one of them dealing with this case. Mr. Krock's column of August 18, 1961 is reprinted in full by petitioner at pages 9-11 of its reply brief.

Neither the multiplicity of motions nor the newspaper stories furnish a proper basis for determining whether or not an important question of federal law is involved which requires settlement by this Court. Since petitioner asserts, however, that these are relevant factors for consideration by the Court, we believe it is pertinent to note that counsel for the moving organizations have informed us that their attention was directed to this case by petitioner itself through the medium of a 10-page publicity release which it distributed throughout the country. We further believe, on the basis of our examination of the publicity release, that the newspaper stories concerning this case were for the most part based upon that release.

We, therefore, take issue with petitioner's statements that "the widespread importance of these questions has been suggested by the motions made" and "the widespread importance of these questions is also demonstrated by the editorial columns of Mr. Arthur Krock". We suggest that petitioner cannot offer those matters to this

Court in proof of the importance of the case when they represent an interest generated solely by acts of petitioner itself.

It will be noted that although the decision of the Court of Appeals was handed down on March 28, 1961, the newspaper stories were not published until several months afterward. Such belated acknowledgment of the decision by two newspapers published daily in the city in which the decision was rendered scarcely furnishes convincing proof of its widespread importance.

Concerning Mr. Krock's column, reproduced in full in petitioner's reply brief, we do not feel it is appropriate to comment. However, because the column has been placed before the Court, we feel impelled to observe that in it Mr. Krock has made numerous errors of fact, proven by the record, as well as several statements alleged as fact which are wholly outside the record.

The petition for a writ of certiorari should be denied.

September 15, 1961.

Respectfully submitted,

MORRIS SHAPIRO,
Counsel for Respondents.

HARRY KATZ,
SAHN, SHAPIRO & EPSTEIN,
Of Counsel.